BAIL SLIP

That the Appellants/Accused Nos.2 & 4 namely Velu @ Elumalai & Mari Naicker were directed to be released on bail by order of this Court dated 21.8.2000 in Crl.M.P.No.4893/2000 in Crl.A.No.637/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 637 OF 2000

1) Velu @ Elumalai
2) Mari Naicker .. Appellants/ Accused 2 & 4

- Vs -

The State by the
Inspector of Police
Tiruporur Circle
Tiruporur - 7
Chengalpattu District. .. Respondent/ Complainant

Appeal preferred against the conviction and sentence passed by the learned Principal Sessions Judge, Chengalpet, made in S.C. No. 301 of 1998 dated 26.6.2000 as stated therein.

For Appellants : Mr. V.Vibhishanan

For Respondent : Mr. V.Jayaprakash Narayanan
GA (Crl. Side)

WEB COPY

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

Aggrieved over the judgment of the court of sessions, Chengalpet, in S.C. No.301 of 1998, A-2 and A-4 in the said sessions case, who stood charged along with others as narrated below, have broughtforth this appeal.

2. A-2 to A-4 were charged under Section 302 IPC; A-1 and A-3 were charged under Section 304 read with 34 IPC; A-1 was charged under Section 323 IPC; A-2 to A-4 were charged under Section 324 read with 34 IPC; A-1 was charged under Section 324 IPC; A-2 to A-

https://hcservices.ecourts.gov.in/hcservices/

4 were charged under Section 324 read with 34 IPC; A-2 was charged under Section 324 IPC (6 counts); A-1, A-3 and A-4 were charged under Section 324 read with 34 IPC (6 counts); A-3 was charged under Section 324 IPC; A-1, A-2 and A-4 were charged under Section 324 read with 34 IPC; A-3 was charged under Section 323 IPC; A-1, A-2 and A-4 were charged under Section 323 read with 34 IPC; A-4 was charged under Section 323 IPC and A-1 to A-3 were charged under Section 323 read with 34 IPC. On trial, the trial court found A-1 and A-3 guilty under Section 324 IPC and they were sentenced to the period already undergone and were directed to pay a fine of Rs.500/= each with a default sentence of three months rigourous imprisonment. A-3 was also found guilty under Section 323 IPC and he was sentenced to the period already undergone. A-4 was found guilty under Section 302 read with 34 IPC and he was sentenced to life imprisonment. A-2 was found guilty under Section 302 read with 34 IPC and Section 324 IPC (4 counts) and was sentenced to imprisonment for life for the former offence, while he was sentenced to three months rigourous imprisonment on each count for the latter offence. The sentences were directed to run concurrently.

3. The short facts necessary for the disposal of this appeal could be stated thus :-

The appellants, the other accused, the deceased and P.W.s 1 to 13 all belong to Royalpuram village. They were all neighbours. On 14.4.93 at about 7.00 p.m., Vinayagam, the complainant, along with his family members was witnessing television in his house. At that time, one Velu and his mother came over to the house of Vinayagam and complained that he was assaulted by A-1 near a petty shop and A-1 questioned as to why Vinayagam and Velu spoke bad about him. Therefore, Velu and his mother went and questioned A-1 and A-1 assaulted them. They, accompanied by Vinayagam, went to the house of A-1 and Vinayagam questioned A-1 about the assault on Velu. There was a wordy quarrel between A-1 and Vinayagam. They were separated by the other people.

4. In the meanwhile, one Arumugam came there and A-1 threatened Arumugam and assaulted him with hands. When Vinayagam caught hold of A-1, he escaped, went to his house, took out a knife and assaulted Vinayagam on the left side abdomen and left hand.

5. In the meantime, on hearing the noise, other members of the family rushed to the house of A-1. At that time, A-2 cut P.W.2 on the left shoulder. A-4 beat P.W.9 with a stick. A-3 beat P.W.3 on the left hand. A-2 cut P.W.2 on his head. When P.W.1 questioned about the same, A-2 cut P.W.1 on the left forearm and shoulder. A-4 beat the deceased with sticks and A-2 beat the deceased on the head and left thigh. A-2 and A-4 beat P.W.2. On hearing the commotion and the distressing cries of the witnesses, the neighbours gathered and the accused left the scene of occurrence with the weapons.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

6. Immediately the injured were taken to the hospital. P.W.12, the doctor attached to the Government Hospital, Chengalpet treated them. Vinayagam was examined by the doctor and the doctor issued, Ex.P-2, the copy of the accident register. P.W.2 was thereafter examined by the doctor and the doctor issued Ex.P-3, the copy of the accident register and Ex.P-4, the wound certificate. The doctor examined P.W.8 and issued Ex.P-5, the copy of the accident register. The doctor, thereafter, examined P.W.10 and issued Ex.P-6, the copy of the accident register. The doctor examined P.W.9 and issued Ex.P-7, the copy of the accident register. Thereafter, the doctor examined P.W.1 and issued Ex.P-8, the copy of the accident register.

7. Vinayagam left the hospital and went to Tiruporur police station and gave a complaint to the Sub-Inspector of Police. The said complaint stands marked as Ex.P-1 on the strength of which a case came to be registered in crime No.257/93 under Sections 323, 324 and 302 IPC at 5.30 a.m. Ex.P-16 is a copy of the printed first information report. The express report was despatched to court.

8. On receipt of a copy of the printed first information report, P.W.16, the Inspector of Police, took up investigation. He proceeded to the scene of occurrence where he prepared an observation mahazar, Ex.P-17 and drew a rough sketch, Ex.P-18 in the presence of two witnesses. He recovered bloodstained earth, M.O.4 and sample earth, M.O.5, under a mahazar, Ex.P-19. He conducted inquest over the dead body of the deceased in the presence of witnesses and panchayatadars and prepared inquest report, Ex.P-20. During the inquest he examined the witnesses and recorded their statements. After the inquest, a requisition was given to the doctor to conduct autopsy on the dead body of the deceased.

9. On receipt of the requisition, P.W.13, Professor of Forensic Medicine, Chengalpet Medical College and Hospital, conducted autopsy on the dead body of the deceased and found the following injuries :-

> "1) Stab injury, horizontal seen on the front of left thigh gaping 5 x 7 x 1-1/2 cms cutting the skin, muscles and blood vessels.
> 2) Cut injury on the back of left side scalp 6 x 1 cm bone deep cutting the skin and muscles.
> 3) Cut injury 2 x ¼ x ¼ cm seen on the pinna of the left ear cutting into two.
> 4) Abrasion 9 x 1 cm on the left side face along the jaw bone with contusion underneath. Fracture of mandible at its centre noted.
> 5) Abrasion on the front of right shoulder 12 x 1 cm.
> 6) Subdural clots seen on both cerebral hemispheres. Sub arachnoid haemorrhage seen. Cut section of brain shows petechial haemorrhages

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

all over the brain matter."

The doctor issued Ex.P-9, the post-mortem certificate, opining that the deceased would appear to have died of head injuries sustained by her.

10. On 22.4.93 at about 1.00 p.m., the investigating officer arrested A-1 and on the confession statement given by him, M.O.12, shirt and M.O.11, lungi, were recovered under a mahazar, Ex.P-23. The confessional statement given by A-1 stands marked as Ex.P-22. On the complaint of A-1 a case came to be registered by the Sub-Inspector of Police in crime No.258/93. A-4 was arrested by the investigating officer and on the confession statement given by him, M.O.14, shirt was recovered under a mahazar, Ex.P-25. The confessional statement given by A-4 stands marked as Ex.P-24. A-2 was arrested on 4.5.93 and he gave a confessional statement, the admissible portion of which is marked as Ex.P-30, pursuant to which a bloodstained dothi, M.O.2 and M.O.1, knife, were seized under a mahazar, Ex.P-31. All the material objects recovered from the scene of occurrence, from the dead body and from the accused were sent to court with a requisition to send them for analysis. The court in turn forwarded the material objects for analysis and obtained Ex.P-28, the chemical analysis report and Ex.P-29, the serology report. On completion of the investigation, the investigating officer filed the final report against the accused. The case was committed to the court of sessions and necessary charges were framed against the appellants and the other accused.

11. In order to substantiate the charges framed against the accused, the prosecution examined eighteen witnesses and relied on thirty-one exhibits and fifteen material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances appearing in the evidence of the witnesses. They denied them as false. No defence witness was examined, but on the side of the defence the accused filed a written statement along with the wound certificates issued to A-1, A-2 and A-4. After hearing the arguments advanced by either side, the trial court found the accused guilty and they were sentenced as stated above. Aggrieved over the said judgment, the appellants have broughtforth this appeal.

WEB COPY

12. Learned counsel appearing for the appellants inter alia made the following submissions. In the instant case, there has been a long delay in registering the case. The occurrence, according to the prosecution, took place at about 7.30 p.m., but the case came to be registered by the police only at 5.30 a.m. on the next day morning. No explanation has been offered by the prosecution for the delay, which is fatal to the prosecution case. Secondly, in the instant case, three of the accused, namely, A-1, A-2 and A-4 have suffered injuries during the course of the same transaction and they were also treated by the same doctor at the Government Hospital between 8.20 p.m. and 8.40 p.m. and wound certificates have also been issued, but they were not placed by the prosecution before the trial court and the same was placed

https://hcservices.ecourts.gov.in/hcservices/

before the trial court only by the accused at the time when they were questioned under Section 313 Cr.P.C. A perusal of the wound certificates in respect of the accused would reveal that they sustained incised injuries, but the prosecution made a feeble attempt through one of the witness, who has spoken to the effect that as a defence measure one of the witness attacked the accused with a stick once. But injuries were sustained by A-1, A-2 and A-4 and that too they were incised injuries, which could not have been caused with the use of a stick and the prosecution has in no way explained the injuries suffered by the accused. That apart, the learned counsel would add that in the instant case, the place of occurrence, according to the prosecution witnesses, also differs. According to the prosecution, the occurrence took place in front of the house of A-1, which would clearly indicate that the prosecution witnesses have gone over there and the injuries found on the accused would also clearly reveal that they were armed with deadly weapons and this would show that they were the aggressors and only at their instance the attack commenced. Apart from that, in the instant case, according to P.W.3, the occurrence did not take place in front of the house of A-1, but somewhere else. In the instant case, A-1 had given a complaint to the police and the same was registered as crime No.258/93. If to be so, there was a duty cast upon the prosecution to produce the documents therefor, but the prosecution has not even cared to file the first information report or the final report or the statements recorded. It is also pertinent to point out that the investigating officer would go to the extent of telling that he did not know as to what happened to the investigation in that case. All the above would go to show that the prosecution did not place the facts clearly before the trial court for the court to understand the genesis of the case or to find out the truth of the matter. Even according to the evidence of P.W.1, there was a free fight between the parties. The above circumstances would indicate that all the materials though were brought to the notice of the court and the trial court though in its judgment referred to all the materials, has erroneously found the appellants guilty, and therefore the appellants are entitled for acquittal.

13. This Court heard the learned Govt. Advocate (Crl. Side) on the above contentions and also perused the recorded evidence, both oral and documentary.

WEB COPY

14. It is not in controversy that the deceased Poongothai died on account of homicidal violence. The same stands established through the evidence of the doctor, P.W.13, who conducted autopsy and who issued the post-mortem certificate, Ex.P-9. The appellants have not disputed the cause of death of the deceased either before the trial court or before this Court. On the medical evidence this Court holds that the deceased, Poongothai, died on account of homicidal violence.

https://hcservices.ecourts.gov.in/hcservices/

15. In the instant case, according to the prosecution the occurrence took place on 14.4.93 and number of persons were injured. In the instant case, P.W.s 1 to 11 were shown as eye

witnesses out of whom P.W.s 3 to 7 have turned hostile. It is true that P.W.s 1, 2, 8, 9 10 and 11 have supported the prosecution case. A perusal of the evidence of the above witnesses would clearly reveal that the entire evidence of the prosecution projected through the above witnesses were thoroughly discrepant as to narration of the events. Firstly the occurrence had taken place at about 7.30 p.m., but it was brought to the notice of the police by way of a complaint through one Vinayagam only at 5.30 a.m. on the next day. It is also seen from the records that the police station is situate at a distance of about eleven kilometre from the scene of occurrence. The prosecution witnesses also engaged a van to go to the hospital for treatment. In the circumstances, the contention of the prosecution that there was no conveyance available could not be accepted. Apart from that, it is the evidence of P.W.1 that the said Vinayagam, who is the complainant, went to the police station immediately that night, but the first information report, as could be seen, has been registered only at 5.30 a.m. on the next day. Thus the prosecution has no explanation to offer for the inordinate delay that has occurred in lodging the complaint. Hence, this Court is of the considered opinion that the said inordinate delay is fatal to the case of the prosecution.

16. It is also pertinent to point out that in the course of the same transaction, A-1, A-2 and A-4 were injured. The prosecution was not fair enough to mark the wound certificates or the accident register copies in respect of the injuries sustained by the above accused. On the contrary, the defence has produced the accident register copies when the accused were questioned under Section 313 Cr.P.C. A perusal of the accident register copies issued in respect of the accused would clearly indicate that they sustained incised injuries. If A-1, A-2 and A-4 sustained injuries, the prosecution was duty bound to explain as to how they suffered the injuries. Though a feeble attempt has been made by the prosecution through one of the witness to show that in defence one of the witness attacked the accused with a stick causing one injury, the said evidence is not convincing for the simple reason that though the witness has stated that one injury was caused on the accused by the use of a stick, it is pertinent to point out that three of the accused have suffered injuries and that too incised injuries, which could not have been possible with the use of a stick. Hence, it could be well stated that the prosecution has not made any attempt, much less convincing attempt to explain the injuries sustained by the accused.

17. Yet another circumstance, which stood against the prosecution was that admittedly, according to the investigating officer, P.W.16, a case came to be registered on the complaint given by A-1 in crime No.258/93, but the prosecution has not produced the first information report before the lower court. P.W.18 went to the extent of stating that he did not know as to what happened to the investigation in crime No.258/93. A case, which has been registered at the instance of the accused, when it

https://hcservices.ecourts.gov.in/hcservices/

is part and parcel of the transaction during which the deceased, the witnesses and A-1, A-2 and A-4 sustained injuries, the prosecution was not fair in not only failing to mark the wound certificates issued to the accused, but also in not marking the first information report or the final report in crime No.258/93 or offering any acceptable explanation as to what happened to the investigation in respect of crime No.258/93. This would clearly indicate the fact that the prosecution was not fair before the trial court.

18. Another added circumstance is the evidence of P.W.11. According to his evidence there was a free fight for about half an hour in the place and thus it could be seen that there was a free fight between the parties at the time of occurrence. In such circumstances, when two cases came to be registered in respect of the same transaction, one at the instance of the prosecution witnesses and the other at the instance of the accused, the prosecution is duty bound to investigate both the cases and place the facts before the trial court so that the court could understand the genesis of the case and decide it properly. But in the instant case, one side picture has been completely suppressed and only the other side was focussed before the trial court. The trial court, though discussed the same in the first part of the judgment, has not considered it in its later part, but found the accused guilty.

19. Taking into consideration all the above aspects of the matter, this Court is of the considered opinion that the conviction and sentence imposed on the accused by the trial court cannot be sustained and they are entitled for acquittal.

20. In the result, the conviction and sentence imposed on the appellants by the trial court are set aside and they are acquitted of all the charges framed against them. The criminal appeal is allowed. It is reported that the appellants are on bail. Bail bonds executed by them shall stand cancelled.

GLN

Sd/
Asst.Registrar

WEB COPY

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Judicial Magistrate No.I, Chengalpet.
1a. -do- Thro The Chief Judicial Magistrate, Chingalpet.
1b. The XVI Metropolitan Magistrate, George Town, Madras.
1c. -do- Thro The Chief Metropolitan Magistrate, Egmore Chennai 8.
1d. The Principal Sessions Judge, Chengalpet.
2) The District Collector, Chengalpet.
3) The Director General of Police, Chennai.
4) The Public Prosecutor, High Court, Madras.
5) The Superintendent of Central Prison, Cuddalore.
6) The Inspector of Police, Tiruporur Police Station, Tirupur 7, Chengalpet District.

CRL. A. NO. 637 OF 2000

RA(CO)
SR/10.9.2005

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/